IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.963 OF 2006
IN
JUDGES ORDER NO.260 OF 2006
IN
EXECUTION APPLICATION NO.314 OF 2006
IN
AWARD DATED 22/3/2005
IN
CASE NO.77 OF 2003

Gahlot Development Services Pvt. Ltd....Petitioner/claimant
Vs.
Babar Estate Pvt. Ltd. & Ors. ...Respondents

Mr.Swapnil Bangure i/b. Vinod Mistry & Co. for Claimant
Ms. S.T. Shaikh i/b. S.K. SRivastava & Co. for Respondents 1 and 2
Ms. Aarati T. i/b. Viraj Maniar & Asso. for Respondent No.3

CORAM: SMT. ROSHAN DALVI,J.
DATED: 8TH JANUARY, 2007

P.C.

1. The parties have entered into the Consent Terms on 11th March, 2005. Under the Consent Terms the Respondents were to pay the Claimants Rs.80 Lakhs and construct 5 shops admeasuring 1500 sq. ft. build-up area. The amount has been paid. The shops have been constructed. There is therefore, sufficient compliance of the Consent Terms. The possession of the 5 shops however have not been handed over to the claimants. Under Clause 5 of the Consent Terms the Claimants are entitled to use, occupy, possess and carry out day to day business in the 5 shops without obstruction or interruption from the Respondents. Under Clause 10 of the Consent Terms the Respondents have agreed to allow the claimants to make their furniture and fixtures and also agreed to provide electric meters and water supply.

2. The Respondents have handed over possession of the 5

shops to the Sheriff's Bailiff. Occupation Certificate for the construction of the 5 shops is not obtained. The Respondents agree and undertake to apply for the Occupation Certificate by 20th January, 2007. A part of the Judges Order now sought by the Claimants is already complied with. The further part which is now claimed by the claimants is for handing over possession of 5 shops to the Claimants. At present and until the occupation certificate is obtained the claimants would not be entitled to their rights under Clause 5 of the Consent Terms. They are entitle to their rights under Clause 10 of the Consent Terms.

3. Hence, the following order :

1. The Sheriff's Bailiff shall hand over vacant possession of the 5 shop premises constructed by the Respondents to the Claimants.

2. The Claimants shall not commence to use, occupy and carry on day to day business in the 5 shop premises until Occupation Certificate is obtained.

3. The Claimants shall be entitled to make their furniture and fixtures therein.

4. The Respondents shall apply for the Occupation Certificate on or before 20th January, 2007.

5. The Respondents shall give a copy of the application to the Claimants.

6. The Show cause Notice is disposed of accordingly.

(SMT. ROSHAN DALVI, J.)